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10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In Re:

14 SEDGWICK, LLP,

15 Debtor.
16

17 NO. 18-31087 (HLB)

18 OBJECTION TO JOINT PLAN
19 OF LIQUIDATIONS OF
20 SEDGWICK, LLP

21 HON. HANNAH L.
22 BLUMENSTIEL, JUDGE

23 DATE: January 30, 2020
24 TIME: 10:00 a.m.
25 DEPT: 19
26
27
28

Objection to Joint Plan of Liquidation Of Sedgwick, LLP
Case No. 18-31087 (HLB)

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PLEASE TAKE NOTICE that Troy D. McMahan ("MCMAHAN"), who has been classified as a Class 3 Interest Holder claim¹ and Non-Settling Partner by the Debtor, hereby objects to the Joint Plan of Liquidation of Sedgwick, LLP (the "Plan") on the following grounds:

I.

INTRODUCTION

Sedgwick, LLP's (the "Debtor") proposed Plan seeks to bar Non-Settling Former Partners from "commencing any and all past, present, or future Claims or causes of actions and from asserting any and all allegations of liability or damages, of whatever kind, nature or description, direct or indirect, in law, equity or arbitration, absolute or contingent, in tort, contract, statutory liability or otherwise, whether or not based on strict liability, negligence, gross negligence, fraud, breach of fiduciary duty or otherwise (including attorneys' fees, costs or disbursements), against a Settling Former Partner in any way, based on, relating to, or arising from, their prior relationship and duties and responsibilities under the Partnership Agreement." (See Plan, pp. 44:23-28 - 45:1-2.) Debtor alleges that such Plan provision is authorized under Bankruptcy Rule ("Rule") 9019 and California Code of Civil Procedure ("CCP") Section 877.6. However, CCP Section 877.6 is not applicable to the facts of this case. Moreover, even assuming, *arguendo*, that it is applicable, Debtor fails to show that

¹ As a Class 3 claim, MCMAHAN is deemed to reject the Plan. (See Disclosure Statement in Support of Joint Plan of Liquidation of Sedgwick LLP (Doc. No. 296).) Objection to Joint Plan of Liquidation Of Sedgwick, LLP
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1 this proposed settlement meets the good faith requirements mandated
2 under this section and Rule 9019 and fails to comply with the
3 procedural requirements of CCP 877.6.

4 MCMAHAN further objects to the proposed Plan on the grounds
5 that Debtor's Liquidation Analysis is unsupported by any facts and
6 the Plan fails to meet the statutory fairness requirements of
7 Section 1129 of the Bankruptcy Code.
8

9 **II.**

10 **ARGUMENT**

11 **A. CCP SECTION 877.6 IS INAPPLICABLE TO THE POTENTIAL CLAIMS.**

12 CCP Section 877.6 provides that:

13 (a) (1) Any party to an action in which it is alleged that two
14 or more parties are joint tortfeasors or co-obligors on a
15 contract debt shall be entitled to a hearing on the issue of
16 the good faith of a settlement entered into by the plaintiff or
17 other claimant and one or more alleged tortfeasors or co-
obligors, upon giving notice in the manner provided in
subdivision (b) of Section 1005. . . .

18 (c) A determination by the court that the settlement was made
19 in good faith shall bar any other joint tortfeasor or co-
20 obligor from any further claims against the settling tortfeasor
or co-obligor *for equitable comparative contribution, or*
partial or comparative indemnity, based on comparative
negligence or comparative fault.

21 (emphasis added)

22 Here, there is no allegation that any Settling Former Partner
23 is a joint tortfeasor or co-obligor on a contract debt with any
24 other Former Settling Partner, let alone the Non-Settling Former
25 Partners. Rather, all former partners are separately liable for
26 their individual obligations, and only to the extent of their
27 interest in the limited partnership. Moreover, CCP Section 877.6(c)
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1 specifically limits the preclusion of claims to indemnification or
2 contribution among the joint obligors based on comparative fault or
3 comparative negligence. Despite this restriction, Debtor seeks to
4 extinguish *any and all* claims against the Settling Former Partners,
5 even claims of gross negligence, fraud, and breach of fiduciary
6 duty. The Debtor's effort to expand the protections provided under
7 CCP Section 877.6 should not be condoned since it contrary to the
8 specific language of the statute and lacks legal authority.

10 **B. EVEN ASSUMING, ARGUENDO, THAT CCP SECTION 877.6 IS APPLICABLE,**
11 **DEBTOR FAILS TO SHOW THE PROPOSED SETTLEMENT MEETS THE GOOD**
12 **FAITH REQUIREMENTS OF CCP 877.6 OR RULE 9019.**

13 Debtor alleges in its Plan that the proposed settlement with a
14 number of former partners is "reasonable." However, the Debtor
15 fails to set forth each Settling Former Partner's potential
16 liability or contribution to the settlement and has refused to
17 provide such information to MCMAHAN. As set forth above, and as
18 admitted by the Debtor, each Settling Former Partner's liability
19 must be calculated separately and apart from any other Settling
20 Former Partner based upon their ownership interest during the
21 relevant time period. Although the Debtor claims to have calculated
22 each Settling Former Partner's potential liability and contribution,
23 it fails to disclose this information in the Plan or the Disclosure
24 Statement. Without a full disclosure of each Settling Former
25 Partner's individual contribution and potential risk of all claims,
26 plus an allocation to those claims, neither MCMAHAN nor this Court
27 can properly evaluate whether the proposed settlement is reasonable

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1 under either CCP 877.6 or Rule 9019. (See *Tech-Bilt, Inc. v.*
2 *Woodward-Clyde & Assocs.* (1985) 38 Cal. 3d 488, 499 (factors that a
3 court should consider in ruling whether there is a good faith
4 settlement is the plaintiff's potential recovery, the settling
5 party's potential liability, and the amount paid in settlement); see
6 also *A&C Properties* (9th Cir. 1986) 784 F.2d 1377, 1381 (setting
7 forth four factors a court should consider in determining whether a
8 settlement is fair and equitable.)

10 The Debtor further alleges that it has investigated all potential
11 claims against the Settling Former Partners, including potential
12 breach of fiduciary duty claims, but does not believe any such
13 claims exist. However, it fails to explain what steps were taken to
14 investigate these potential claims or why it believes these claims
15 do not exist. Moreover, it does not even address the potential
16 liability that the Settling Former Partners have to the Non-Settling
17 Former Partners. Until the Debtor discloses all facts to show the
18 proposed settlement is reasonable under the circumstances,
19 confirmation of any Plan is unwarranted.

21 **C. THE DEBTOR HAS FAILED TO COMPLY WITH CCP 877.6 REQUIREMENTS.**

22 CCP Section 877.6(a)(2) provides that, in lieu of a noticed
23 motion, a party may apply for determination of good faith settlement
24 after providing notice. Here, Debtor originally filed a motion
25 seeking an order approving the proposed settlement agreement and
26 releasing all claims of the Settling Former Partners; however, it
27 withdrew this motion after receiving an opposition from another Non-
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1 Settling Former Partner. (See Opposition to Debtor's Motion for
2 Order Approving the Compromise of a Controversy Among the Debtor and
3 Certain Former Equity Partners of the Debtor (Document No. 276);
4 Notice of Withdrawal, Without Prejudice, of Motion For Order
5 Approving the Compromise of a Controversy Among the Debtor and
6 Certain Former Equity Partners of the Debtor (Document No. 280).)
7 It now seeks to obtain the CCP Section 877.6 release through its
8 application for confirmation of the Plan, rather than by noticed
9 motion. However, the Debtor failed to indicate "the basis, terms,
10 and amount of the settlement" for each Settling Former Partner in
11 either the Plan or the Disclosure Statement, which is required under
12 CCP Section 877.6(a)(2). Accordingly, the Plan should not be
13 confirmed until the Debtor complies with the statutory requirements
14 of CCP Section 877.6 and provides all information regarding the
15 basis, terms, and amount each Settling Former Partner is paying.

18 **D. THE DEBTOR FAILED TO SHOW THE PLAN TREATS CLASS 3 MEMBERS**
19 **FAIRLY AND EQUITABLY.**

20 Debtor has failed to show that "the plan does not discriminate
21 unfairly, and is fair and equitable, with respect to each class of
22 claims or interests that is impaired." (11 U.S.C. § 1129.) MCMAHAN
23 has been informed, and believes, that at least two of the Settling
24 Former Partners, who were "under-capitalized" at the time of the
25 dissolution (a class that Debtor alleges MCMAHAN falls within), are
26 receiving a discount/reduction of the asserted under-capitalized
27 claims by as much as 70%; however, the Debtor has failed to set
28

1 forth any reason why those Settling Former Partners are receiving
2 this significant discount or why those funds (which are believed to
3 be approximately \$200,000.00) are not being contributed to the
4 estate. Moreover, the Debtor has not offered a similar reduction of
5 its "under-capitalized" claim against other similarly classified
6 partners, such as MCMAHAN, or explained why it is treating similarly
7 classified members differently. Given these facts, the Debtor's
8 proposal is tantamount to disparate treatment, which is inequitable
9 and unreasonable, and appears to place the interests of the Settling
10 Former Partners over the best interest of the estate, especially
11 since the Settling Former Partners include the Debtor's responsible
12 individuals.² Given that the Debtor has failed to show the proposed
13 settlement is fair, equitable, or reasonable, the Plan should not be
14 confirmed.
15

16
17 **E. THE DEBTOR FAILED TO INVESTIGATE ALL CLAIMS.**

18 The Debtor claims in its moving papers that it "does not
19 believe" that the firm has additional claims against the Settling
20 Former Partners, including breaches of fiduciary duty claims. Yet,
21 even though it has not investigated such claims, the Debtor is
22 attempting to release all claims against the Settling Former
23 Partners, including the prior executive committee members and the
24 dissolution committee members who had, and continue to have, a
25
26

27 ² Releasing the responsible individuals appears to be a direct conflict of
28 interest since these individuals presumably approved the proposed settlement.
MCMAHAN also questions why the Debtor's counsel appears to be representing the
Settling Former Partners in this matter.

1 fiduciary responsibility to the Debtor. The Debtor should not be
2 allowed to release such claims without conducting a full
3 investigation into the viability of, and potential recovery from,
4 these claims since they could result in more money to the estate.
5 The Debtor should only be allowed to release those claims for which
6 payment is made, *i.e.*, the clawback claims.
7

8 **F. THE DEBTOR FAILS TO SUPPORT ITS LIQUIDATION ANALYSIS.**

9 In its liquidation analysis, the Debtor claims that it would
10 incur additional costs should the case be converted to a Chapter 7,
11 and that its potential recovery will decrease. For example, the
12 Debtor alleges its litigation expenses will increase to \$800,000
13 should the case be converted and that it would only recover
14 \$2,000,000 in clawbacks, rather than \$2,604,000. However, the
15 Debtor fails to explain the basis for these allegations. There is
16 no evidence that the Settling Former Partners would not agree to pay
17 the settlement amount to a Chapter 7 Trustee, which would negate the
18 \$350,000 litigation costs, or any explanation why the contingent
19 counsel fees would rise to 40% of the amount recovered, rather than
20 remain at the 35% rate under the Chapter 11. The Debtor also fails
21 to explain the basis for the \$350,000 "Trustee Professionals -
22 Chapter 7," fails to set forth the rates that will be charged by the
23 Liquidating Trustee, and fails to explain the basis for alleging the
24 Liquidating Trustee's costs and fees will be \$550,000.
25
26

27 Given these facts, along with the disparate treatment of the
28 member class and the possible conflict of interest of some Settling

1 Former Partners, MCMAHAN believes that an independent Chapter 7
2 Trustee would be in the best position to evaluate each Settling
3 Former Partners' settlement contribution and determine whether it is
4 a reasonable amount in comparison to their individual potential
5 liability. MCMAHAN further believes that a Chapter 7 Trustee could
6 liquidate the assets for a lessor fee than a Liquidating Trustee.
7

8 Thus, unless Debtor provides support for its allegations, it
9 appears a Chapter 7 conversion may be a better option.

10 **III.**

11 **CONCLUSION**

12 The Debtor fails to provide any legal authority to support the
13 Plan's provision to bar the Non-Settling Former Partners' potential
14 claims against the non-bankrupt Settling Former Partners and provide
15 them with a full release of all claims, despite the fact they are
16 only settling clawback claims. The Debtor further fails to show
17 that the proposed settlement agreement is fair or reasonable given
18 the disparate treatment of similarly classified members. Last, the
19 Debtor fails to factually support its Liquidation Analysis or show
20 that it would not be more beneficial to convert the case to a
21 Chapter 7. For these reasons, MCMAHAN respectfully requests that
22 this Court sustain his objections and not confirm the Plan.
23
24

25 Dated: January 16, 2020 Respectfully submitted,

26 SWEET & WALKER PC

27 /s/ Lorna Walker

28 Lorna Walker

Attorney for TROY D. McMAHAN